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SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiff,

v.

UNITED STATES FISH AND WILDLIFE SERVICE and DIRK KEMPTHORNE, Secretary of the Interior,

Defendants.

Case No. '07 CV 2379 W NLS

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

BY FAX

I. INTRODUCTION

1. This is an action for declaratory and injunctive relief brought by Plaintiff the Center for Biological Diversity ("the Center") in connection with the Endangered Species Act, 16 U.S.C. §§ 1531 1544 ("ESA"). The Secretary of the Interior ("Secretary") has violated the ESA by failing to designate sufficient critical habitat for the spreading navarretia (*Navarretia fossalis*) and the thread-leaved brodiaea (*Brodiaea filifolia*) to ensure the conservation and recovery of both species. 16 U.S.C. § 1533(a)(3). The spreading navarretia is an ascending herb, with white to lavender flowers, which grows in vernal pools, clay flats, irrigation ditches, and grasslands from north-western Los Angeles County and western Riverside County, south through coastal San Diego County into north-western Baja California, Mexico. It was listed as threatened on October 13, 1998. 70 Fed. Reg. 60658, 60659 (Oct. 18, 2005). The thread-leaved brodiaea is a flowering perennial herb usually found in herbaceous plant communities that occur in open areas on clay soils in Los Angeles, San Bernardino, Orange, Riverside, and San Diego counties. The species was listed as threatened on October 13, 1998. 70 Fed. Reg. 73820, 73820 (Dec. 13, 2005). This action seeks an order declaring that the Secretary has failed to designate sufficient critical habitat to provide for the conservation of the spreading navarretia and the thread-leaved brodiaea and compelling the Secretary to revise the critical habitat designation in a manner necessary to conserve the species. This action arises under and alleges violations under the ESA, 16 U.S.C. §§ 1531-1544, and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551 et seq.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question); and 16 U.S.C. §§ 1540(c) and (g) (action arising under the ESA and its citizen suit provision).

3. Venue is properly vested in this Court pursuant to 16 U.S.C. § 1540(g)(3)(A) because the species are both found in this district and 28 U.S.C. § 1391(e) because Plaintiff maintain an office within this judicial district.

4. Plaintiff provided 60 days notice of intent to file this suit pursuant to the citizen suit provision of the ESA, 16 U.S.C. § 1540(g)(2)(C), by letter to the Defendant dated and sent via certified mail on August 28, 2007. The Defendant did not respond to the notice of intent to sue nor has the Defendant remedied the alleged violations. Therefore, an actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201. For all claims, Plaintiff has exhausted all of the administrative remedies available to them.

III. RELATED CASES

5. This case is related to the pending matter *Southwest Ctr. for Biological Diversity v. Bartel,* No. 98-CV-2234- B (JMA), pending before this court.

IV. PARTIES

6. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("Center"), formerly known as the Southwest Center for Biological Diversity, is a non-profit corporation with offices in San Francisco, Los Angeles, San Diego, and Joshua Tree, California; Phoenix and Tucson, Arizona; Silver City, New Mexico; and Washington, D.C. The Center is actively involved in species and habitat protection issues in California and throughout the United States. The Center has over 40,000 members throughout the United States, including many members who reside in Southern California in and near habitat for the spreading navarretia and the thread-leaved brodiaea. The Center's members and staff have educational, scientific research, spiritual and aesthetic interests in the spreading navarretia and the thread-leaved brodiaea and the conservation and recovery of these two species. The Center's members and staff also enjoy the biological and aesthetic values of the spreading navarretia and the thread-leaved brodiaea and have visited many of the areas where the species grow and which Plaintiff alleges were improperly excluded from the designated critical habitat. The Center, its members and staff have participated in efforts to protect and preserve the habitat essential to the continued survival of both species including efforts to preserve the remaining vernal pool habitat and clay flats in Southern California.

7. Plaintiff, its staff and members believe that the health of the spreading navarretia and the thread-leaved brodiaea are representative of the overall health of some of southern

California's most fragile and endangered ecosystems and that the dramatic decline of either species signals the decline of many other species that also depend on these habitats. Plaintiff, its staff and members believe that adequate protection of the spreading navarretia and the thread-leaved brodiaea will benefit these species as well as the ecosystems of southern California as a whole. Defendants' failure to designate adequate critical habitat for both the spreading navarretia and the thread-leaved brodiaea may lead to extirpation of these species, a tragedy in and of itself, and may exacerbate the decline in major portions of the vernal pool and clay flats ecosystems. The failure to designate adequate critical habitat for both species will deprive Plaintiff's staff and members of the aesthetic, scientific, education, conservation, and other benefits that these species provide.

8. Plaintiff, its staff and members have been and continue to be actively involved in efforts to protect and restore the health of the habitat of the spreading navarretia, the thread-leaved brodiaea, and the many other species dependent upon the habitats where these species are found. Such efforts to urge increased state and federal protection for these species and their habitats include participation in the critical habitat designation administrative process, and participation in other efforts related to various federal and state agencies permitting and approvals.

9. The above-described aesthetic, conservation, scientific, educational, and other interests of Plaintiff, its staff and members have been, are being, and, unless the relief prayed for herein is granted; will continue to be adversely affected and irreparably injured by the failure of Defendant to designate adequate critical habitat for the spreading navarretia and the thread-leaved brodiaea.

10. The injuries described above are actual, concrete injuries suffered by Plaintiff, its staff and its members. These injuries are caused by Defendants' failure to designate adequate critical habitat for the spreading navarretia and the thread-leaved brodiaea. The relief sought herein would redress Plaintiff's injuries. Plaintiff has no adequate remedy at law.

11. Defendant DIRK KEMPTHORNE is the Secretary of the Interior and is the

federal official in whom the ESA vests final responsibility for making decisions and promulgating regulations required by and in accordance with the ESA, including proposed and final critical habitat decisions. Dirk Kempthorne is sued in his official capacity.

12. Defendant U.S. FISH & WILDLIFE SERVICE is an agency within the Department of the Interior which has been delegated the responsibility of the Secretary of the Interior described above including responsibility for ESA critical habitat designation.

V. FACTS

A. Legal Background.

13. Among the purposes of the ESA is "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species . . . ." 16 U.S.C. § 1531(b). To this end, section 4 of the ESA requires that the Secretary protect such species by listing them as either "threatened" or "endangered," and by designating "critical habitat" for each listed threatened or endangered species at the time the species is listed. 16 U.S.C. § 1533.

14. "Conserve" and "conservation," as defined in the ESA, "means to use and the use of all methods and procedures necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary." ESA § 3(3), 16 U.S.C. § 1532(3).

15. The ESA requires that the Secretary designate areas of critical habitat for endangered species necessary for the conservation of the species in order to provide the habitat necessary to promote recovery of the species such that the protections of the ESA are no longer needed. ESA §§ 4(a)(3)(A), 3(5)(A) and (3), 16 U.S.C. §§ 1533(a)(3)(A), 1532(5)(A) and (3).

16. "Critical habitat" means

> (i) the specific areas within the geographical area occupied by the species at the time it was listed in accordance with the provisions of section 1533 of this title, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 1533 of this title, upon a determination by the Secretary that such areas are essential for the conservation of the species.

ESA § 3(5)(A), 16 U.S.C. § 1532(5)(A).

17. Section 4(b)(2) of the ESA provides that some areas may be excluded from designation as critical habitat based on economic considerations. However, habitat may not be excluded from designation as critical habitat if the "failure to designate such area as critical habitat will result in the extinction of the species concerned." ESA § 4(b)(2), 16 U.S.C. § 1533(b)(2).

18. Designated critical habitat is protected from destruction and adverse modification pursuant to Section 7(a)(2) of the ESA. 16 U.S.C. § 1536(a)(2).

19. Section 4(f) of the ESA requires the Secretary to develop and implement recovery plans for the conservation and survival of endangered and threatened species. ESA § 4(f), 16 U.S.C. § 1533(f).

B. The Species and Their Habitats.

20. The spreading navarretia (*Navarretia fossalis*) is a spreading or ascending, annual herb, growing to 4 to 6 inches tall. Its small leaves become spine-tipped when dry and its flower has white to lavender white petals arranged in flat, compact heads. It is a unique species adapted to Southern California's harsh and arid conditions. The plant is found from north-western Los Angeles County and western Riverside County through coastal San Diego County and north-western Baja California. The spreading navarretia grows at the edges of vernal pools, in clay flats, irrigation ditches, alkali grasslands, alkali playas, and alkali sinks.

21. Vernal pools are seasonal wetlands that occur for variable periods from winter to spring, but may be completely dry for most of the summer and fall. These wetlands range in size from small puddles to shallow lakes and are usually found in a gently sloping plain of grassland. More than 90 percent of the vernal pool habitat in Southern California has been lost to human activity. Existing habitat is threatened by destruction and fragmentation from urban and

agricultural development, pipeline construction, off-road vehicle activity, trampling by cattle and sheep, weed abatement, fire suppression practices, alteration of hydrology and floodplain dynamics, and competition from alien plant species. Additionally, the incorporation of livestock manure into fields along the San Jacinto River is a threat due to its alteration of the alkali nature of soils in the floodplain. The spreading navarretia is an ascending herb, with white to lavender flowers, which grows in vernal pools, clay flats, irrigation ditches, and grasslands from north-western Los Angeles County and western Riverside County, south through coastal San Diego County into north-western Baja California, Mexico. It was listed as threatened on October 13, 1998. 70 Fed. Reg. 60658, 60659 (Oct. 18, 2005). On September 3, 1998, the Secretary adopted a Recovery Plan for Vernal Pools of Southern California which included the spreading navarretia which was then proposed for listing.

22. The thread-leaved brodiaea (*Brodiaea filifolia*) is a perennial herb that grows from an underground stem. Its stems are slender and rigid and bear three to six bell-shaped, rose-violet flowers. Historically, the thread-leaved brodiaea ranged from the base of the San Gabriel and San Bernardino Mountains, in Los Angeles and San Bernardino Counties, south to western Riverside and San Diego Counties. It is now known to be found in Los Angeles, San Bernardino, Riverside and San Diego Counties. The plant grows at the edges of vernal pools, on grasslands, and floodplains. It grows on various soil types, including Diablo and Altamont clays, Las Flores loamy fine sand, and semi-alkaline mud flats. The thread-leaved brodiaea is a flowering perennial herb usually found in herbaceous plant communities that occur in open areas on clay soils in Los Angeles, San Bernardino, Orange, Riverside, and San Diego counties. The species was listed as threatened on October 13, 1998. 70 Fed. Reg. 73820, 73820 (Dec. 13, 2005). The Recovery Plan for Vernal Pools of Southern California mentioned the thread-leaved brodiaea but did not provide a recovery plan for the species and no other recovery plan has been developed for this species. To date, the Secretary has violated the ESA by failing to provide any recovery plan for the thread-leaved brodiaea.

23. The thread-leaved brodiaea grows in habitat similar to the spreading navarretia

and thus faces similar threats from the loss of this shared habitat. Designating and protecting sufficient critical habitat for the thread-leaved brodiaea is imperative for its continued existence and for its recovery. Habitat for this species is threatened by urban development, off-road vehicle use, clearing for firebreaks, flood control schemes, weed control, over-grazing, and competition from alien plant species. Like the spreading navarretia, the species is also threatened by the alteration of soil chemistry resulting from the dumping of manure and sewage sludge on habitat along the San Jacinto River.

C. Prior Administrative and Judicial Proceedings.

24. At the time of listing of the spreading navarretia as threatened, the Secretary concluded that the designation of critical habitat was not prudent. On November 15, 2001, the Center filed suit challenging this finding. *Ctr. Biological Diversity, et al. v. Norton*, No. 01-CV-2101 (S.D. Cal. Nov. 15, 2001). In an order dated July 1, 2002, the U.S. District Court for the Southern District of California directed that the finding be reconsidered, and that a proposed critical habitat rule, if prudent, be published on or before January 30, 2004. On October 1, 2004, after receiving extensions from the District Court, the Service published a proposed rule that identified 31,086 acres of essential habitat and proposed designating 4,301 acres as critical habitat for the spreading navarretia. 69 Fed. Reg. 60110, 60110 (Oct. 7, 2004).

25. Similarly, after listing the thread-leaved brodiaea as threatened, the Secretary concluded that the designation of critical habitat was not prudent. On November 15, 2001, the Center and the California Native Plant Society filed suit challenging this finding in the same suit with the spreading navarretia and other species. *Center for Biological Diversity et al. v. Department of the Interior et al.*, Case No. CV 01-2101. On July 1, 2002, the U.S. District Court for the Southern District of California directed that the "not prudent" finding be reconsidered, and that a proposed critical habitat rule, if prudent, be published on or before November 30, 2004. On December 8, 2004, the Service published a proposed rule that identified 9,403 acres of essential habitat and proposed designating 4,690 acres as critical habitat for the thread-leaved brodiaea. 69 Fed. Reg. 71283-71319 (Dec. 8, 2004).

D. Critical Habitat Designation

26. On October 1, 2005, the Service published its final critical habitat designation for the spreading navarretia. Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Navarretia fossalis* (spreading navarretia), 70 Fed. Reg. 60657 (October 1, 2005). The final rule for the spreading navarretia only protects 652 acres of critical habitat although the Service had proposed designating 4,301 acres as critical habitat and had identified 31,086 acres of habitat that it found was essential to the species' conservation. *Id.* The Service found that nearly 60 percent of the known spreading navarretia populations are concentrated in southern San Diego County, along the San Jacinto River in western Riverside County, and near Hemet in Riverside County. 70 Fed. Reg. 60659. However, the final rule covers only 652 acres of land in San Diego County and Los Angeles County, excluding Riverside County entirely, and leaving unprotected the vast majority of essential habitat and existing spreading navarretia populations.

27. On December 13, 2005, the Service published its final critical habitat designation for the thread-leaved brodiaea. Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Brodiaea filifolia* (thread-leaved brodiaea), 70 Fed. Reg. 73820 (December 13, 2005). Of the originally proposed 4,690 acres of critical habitat and over 9,000 acres of essential habitat identified, the final designation of critical habitat for the thread-leaved brodiaea was only 597 acres. *Id.*

VI. VIOLATIONS OF LAW

28. The final rule designating critical habitat for the spreading navarretia, 70 Fed. Reg. 60657 (October 1, 2005), contradicts the United States Fish and Wildlife Service's recovery plan and recommendations by peer reviewers.

29. The Service excluded from critical habitat for the spreading navarretia approximately 21,384 acres of non-Federal lands within the San Diego Multiple Species Conservation Program, Western Riverside Multiple Species Habitat Conservation Plan, and Northwestern San Diego Multiple Habitat Conservation Plan. 70 Fed. Reg. 60675. The Section

3(5)(A) analysis erroneously described the existing conservation plans, relied on draft plans, and erroneously concluded that the existence of conservation plans indicates that the designation of critical habitat is not necessary. Additionally, the Service's Section 4(b)(2) analysis exaggerated the economic and other costs of critical habitat designation, while underestimating the benefits, thereby rendering the 4(b)(2) exclusions arbitrary and capricious.

30. In the final rule designating critical habitat for the thread-leaved brodiaea, the Service improperly excluded habitat that met the definition of critical habitat in Section 3(5)(A) of the ESA because it required special management as evidenced by the fact that it was already being managed for the species on public lands. Additionally, the Service improperly exaggerated costs and ignored benefits of critical habitat when deciding to exclude areas from critical habitat designation under Section 4(b)(2). Finally, the Service improperly relied upon a draft conservation plan for the species and irrationally ignored and contradicted its peer reviewers by limiting essential habitat to populations containing 850 plants or more. Many existing populations of plants were thus arbitrarily excluded from critical habitat protection despite the peer review and despite the recovery mandate of the ESA.

31. The final designation of critical habitat for the thread-leaved brodiaea was arbitrary, capricious, and in contradiction to the best available scientific information indicating the extent and the area necessary for the conservation of the species.

32. The ESA requires development and implementation of a recovery plan for all listed species unless the Secretary "finds that such a plan will not promote conservation of the species." ESA § 4(f), 16 U.S.C. 1533(f). Defendants' failure to provide a recovery plan for the thread-leaved brodiaea violates the ESA. Defendants' failure to implement the vernal pool recovery plan to protect and recover the spreading navarretia also violates the ESA.

.33. Throughout the process of designating critical habitat for both species, the United States Fish and Wildlife Service relied on a regulatory definition of "destruction or adverse modification" of critical habitat that has been repeatedly declared invalid. See 50 C.F.R. § 402.02. In *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Service*, 378 F.3d 1059, 1069-70

(9th Cir. 2004), the Ninth Circuit Court of Appeals determined that the regulation improperly eliminated the recovery goal and benefit from critical habitat designation. The United States Fish and Wildlife Service has, to date, failed to revise the regulation. As a result, Defendants relied on invalid criteria to calculate benefits of critical habitat designation.

34. Defendants failed to properly identify and analyze the benefits of designating critical habitat before weighing the costs and benefits necessary to justify the exclusion of habitat from critical habitat designation pursuant to Section 4(b)(2) of the ESA. 16 U.S.C. § 1533(b)(2). For example, the Service improperly relied on an the economic analysis that attributed costs associated with listing the species and other costs to the designation of critical habitat; included speculative costs; and relied on unsupportable assumptions concerning the economic impacts of such designation. Therefore, Defendants acted in violation of Section 4(b)(2) of the ESA.

VII. FIRST CLAIM FOR RELIEF

(Violation of the Endangered Species Act: spreading navarretia)

35. Each and every allegation set forth above is incorporated herein by reference.

36. Defendants failed to issue a legally sufficient critical habitat designation for the spreading navarretia, in violation of Section 3 and Section 4 of the ESA. 16 U.S.C. §§ 1532(5)(A) and 1533(a)(3)(A). Defendants relied on an invalid regulatory definition of adverse modification of critical habitat in concluding that designating critical habitat for the spreading navarretia would have little to no benefit for the species, and Defendants' assertion that the economic benefits of designating critical habitat of a listed species are insubstantial is not based on the best scientific and commercial data available and is contrary to law. Defendants' violations include, but are not limited to: improperly basing their decision on the faulty legal premise that habitat which requires special management should not be designated as critical habitat; failing to rely on the best scientific and commercial data available in determining the extent of essential habitat and designating critical habitat; failing to properly consider all occupied and unoccupied habitat essential to the conservation of the species in making its determination of critical habitat; improperly relying on an invalid regulation; failing to quantify

and analyze the economic and other benefits of designating critical habitat for the spreading navarretia; improperly attributing costs associated with listing the species and other costs to the designation of critical habitat; improperly including speculative costs; and relying on unsupportable assumptions concerning the economic impacts of designation. 16 U.S.C. § 1533(b)(2).

37. For the above reasons, and others, Defendants failed to perform their nondiscretionary duties as required by the ESA, and have acted in a manner that is arbitrary, capricious, and not in accordance with law. ESA § 11(g), 16 U.S.C. § 1540(g); 5 U.S.C. § 706(2)(A).

VIII. SECOND CLAIM FOR RELIEF

(Violation of the Endangered Species Act: thread-leaved brodiaea)

38 Each and every allegation set forth above is incorporated herein by reference.

39. Defendants failed to issue a legally sufficient critical habitat designation for the thread-leaved brodiaea, in violation of Section 3 and Section 4 of the ESA. 16 U.S.C. §§ 1532(5)(A) and 1533(a)(3)(A). Defendants relied on an invalid regulatory definition of adverse modification of critical habitat in concluding that designating critical habitat for the thread-leaved brodiaea would have little to no benefit for the species, and Defendants' assertion that the economic benefits of designating critical habitat of a listed species are insubstantial is not based on the best scientific and commercial data available and is contrary to law. Defendants' violations include, but are not limited to: improperly basing their decision on the faulty legal premise that habitat which requires special management should not be designated as critical habitat; failing to rely on the best scientific and commercial data available in determining the extent of essential habitat and designating critical habitat; failing to properly consider all occupied and unoccupied habitat essential to the conservation of the species in making its determination of critical habitat; improperly relying on an invalid regulation; failing to quantify and analyze the economic and other benefits of designating critical habitat for the thread-leaved brodiaea; improperly attributing costs associated with listing the species and other costs to the

designation of critical habitat; improperly including speculative costs; and relying on unsupportable assumptions concerning the economic impacts of such designation. 16 U.S.C. § 1533(b)(2).

40. Defendants' failure to develop and implement a recovery plan for the thread-leaved brodiaea also violates the ESA. ESA § 4(f), 16 U.S.C. 1533(f)..

41. For the above reasons, and others, Defendants failed to perform their nondiscretionary duties as required by the ESA, and have acted in a manner that is arbitrary, capricious, and not in accordance with law. ESA § 11(g), 16 U.S.C. § 1540(g); 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment providing the following relief:

(1) Declare that Defendant Dirk Kempthorne, Secretary of the Interior, and the U.S. Fish & Wildlife Service violated the ESA by issuing an inadequate designation of critical habitat for the spreading navarretia that fails to provide sufficient critical habitat necessary for conservation of the species;

(2) Direct by injunction that the Secretary issue a revised critical habitat designation for the spreading navarretia which corrects these errors, and which otherwise provides for the conservation of the species, by a date certain;

(3) In order to protect the species pending the completion of an adequate critical habitat designation for the spreading navarretia, enjoin the Secretary of the Interior and the Director of the United States Fish and Wildlife Service from issuing any approval, biological opinion, or concurrence pursuant to Section 7 of the ESA, for any actions that may harm the spreading navarretia or cause destruction or adverse modification to the spreading navarretia habitat within areas of proposed critical habitat that were excluded from designation as critical habitat in the final rule by Defendant pursuant to ESA section 4(b), 16 U.S.C. § 1533(b)(2), or may harm the spreading navarretia or cause destruction or adverse modification to spreading

navarretia designated critical habitat;

(4) Declare that Defendant Dirk Kempthorne, Secretary of the Interior, and the U.S. Fish & Wildlife Service violated the ESA by issuing an inadequate designation of critical habitat for the thread-leaved brodiaea, that fails to provide sufficient critical habitat necessary for conservation of the species;

(5) Direct by injunction that the Secretary issue a revised critical habitat designation for the thread-leaved brodiaea which corrects these errors, and which otherwise provides for the conservation of the species, by a date certain;

(6) In order to protect the species pending the completion of an adequate critical habitat designation for the thread-leaved brodiaea, enjoin the Secretary of the Interior and the Director of the United States Fish and Wildlife Service from issuing any approval, biological opinion, or concurrence pursuant to Section 7 of the ESA, for any actions that may harm the thread-leaved brodiaea or cause destruction or adverse modification to the thread-leaved brodiaea habitat within areas of proposed critical habitat that were excluded from designation as critical habitat in the final rule by Defendant pursuant to ESA section 4(b), 16 U.S.C. § 1533(b)(2), or may harm the thread-leaved brodiaea or cause destruction or adverse modification to thread-leaved brodiaea designated critical habitat;

(7) Declare that 50 C.F.R. § 402.02 is invalid, order the Secretary to vacate and set aside this regulation, and order the Secretary to promulgate a rule defining "adverse modification" in a manner consistent with the ESA by a date certain;

(8) Grant Plaintiff its fees, costs, expenses and disbursements, including reasonable attorneys' fees; and

(9) Grant Plaintiff such additional and further relief as the Court deems just and proper.

DATED: December 18, 2007

Respectfully submitted,

Lisa T. Belenky (CA Bar No. 203225)
Justin Augustine (CA Bar No. 235561)

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BY: DEPUTY

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTER FOR BIOLOGICAL DIVERSITY, Plaintiff, v. UNITED STATES FISH AND WILDLIFE SERVICE and DIRK KEMPTHORNE, Secretary of the Interior, Defendants.	Case No. '07 CV 2379 W NLS **NOTICE OF PARTY WITH FINANCIAL INTEREST** BY FAX

NOTICE OF PARTY WITH FINANCIAL INTEREST

Pursuant to Local Rule 40.2, I, the undersigned counsel of record for Plaintiff, the Center for Biological Diversity, state that to the best of my knowledge and belief, the Center for Biological Diversity is a non-profit corporation that has no parent companies, subsidiaries, or affiliates which have outstanding securities in the hands of the public.

DATED: December 18, 2007

Respectfully submitted,

Lisa T. Belenky

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Attorney for Plaintiff

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 145715 - BH

December 19, 2007
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USAO #.: 07CV2379 CIVIL FILING
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Total-> $350.00

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CENTER FOR BIOLOGICAL DIVERSIT
V. U.S. FISH AND WILDLIFE

ORIGINAL

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
CENTER FOR BIOLOGICAL DIVERSITY

DEFENDANTS
UNITED STATES FISH AND WILDLIFE SERVICE and DIRK KEMPTHORNE, Secretary of the Interior,

(b) County of Residence of First Listed Plaintiff: San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant: ______
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Lisa T. Belenky, Center for Biological Diversity, 1095 Market St., Suite 511, San Francisco, CA 94103, (415) 436-9682 x 307

Attorneys (If Known)

BY FAX

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

'07 CV 2379 W NLS

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence
- Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☒ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Endangered Species Act, 16 U.S.C. §§ 1531-1544

Brief description of cause:
challenge to inadequate critical habitat designation for the thread-leaved brodiaea and spreading navarretia

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $** 0.00
CHECK YES only if demanded in complaint: **JURY DEMAND:** ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Brewster DOCKET NUMBER No. 98-CV-2234- B (JMA)

DATE 12/18/2007

SIGNATURE OF ATTORNEY OF RECORD [signature]

FOR OFFICE USE ONLY

RECEIPT # 145715 AMOUNT $350 12/19/07 BJ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______